***THE HON'BLE MR JUSTICE V.V.S.RAO**

+WRIT PETITION NO : 15349 of 2004

% 08-11-2004

ST. MARY'S COLLEGE OF ENGINEERING AND TECHNOLOGY,
DESHMUKHI VILLAGE, POCHAMPALLY MANDAL, NALGONDA,
REP. BY ITS SECRETARY CUM CORRESPONDENT REV. K.V.K.RAO
… PETITIONER

VS.

$ 1. THE ALL INDIA COUNCIL FOR TECHNICAL EDUCATION,
INDIRA GANDHI SPORTS COMPLEX, I.P. ESTATE,
NEW DELHI, REP. BY ITS MEMBER SECRETARY
& 3 OTHERS
… RESPONDENTS

! COUNSEL FOR THE PETITIONER: MR. S.SRI RAM

^ COUNSEL FOR RESPONDENTS 1 AND 2: MS. C.SINDHU KUMARI
COUNSEL FOR RESPONDENTS 3 AND 4: GOVERNMENT PLEADER
FOR HOME

< Gist:

> Head Note:

? CITATIONS:

1. (2004) 3 SCC 440
2. AIR 1996 S.C. 11

COMPUTER NO.86

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 15349 of 2004

Between:

St. Mary's College of Engineering and Technology,

Deshmukhi Village, Pochampally Mandal,
Nalgonda, rep. by its Secretary cum Correspondent
Rev. K.V.K. Rao.

..... PETITIONER

AND

1 The All India Council for Technical Education,

Indira Gandhi Sports Complex, I.P. Estate,
New Delhi, rep. by its Member Secretary.
2 Prof. R. Natarajan, Chairman, All India Council for

Technical Education, Indira Gandhi Sports Complex,

I.P. Estate, New Delhi.
3 The Station House Officer, Police Station, Alwal, (Halia), Nalgonda.
4 The Station House Officer, Boodhan Pochampally Police Station,

Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the impugned action of the 1st respondent in issuing the show-cause notice to the petitioner seeking to place the petitioner under 'No Admission Category' for the current academic year 2004-2005 vide impugned proceeding No.AICTE/MPC/2004/776
dt.28-7-2004 as without jurisdiction, vitiated by *mala fides*, arbitrary and illegal, offending Article 14 of the Constitution of India by way of issue of a Writ, order or direction, one more particularly in the nature of Writ of Mandamus and consequently direct the 1st respondent to forbear from proceeding further in pursuance of the impugned proceeding during the investigation of the complaints by the 3rd and 4th respondents into the self-same subject matter.

Counsel for the Petitioner: MR. S.SRI RAM

Counsel for Respondents 1 and 2: Ms. C.SINDHU KUMARI

Counsel for Respondents 3 and 4: GOVERNMENT PLEADER FOR HOME

The Court made the following:

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ORDER:

The petitioner-College was established by Joseph Sriharsha & Mary Indraja Educational Society, Hyderabad. The All India Council for Technical Education, New Delhi, first respondent (for brevity, 'the AICTE'), granted approval on 19-2-2000 in four branches of Engineering with intake of 180 in all the branches. Subsequently, on 21-9-2001, four additional branches with additional intake were approved by the AICTE. As per the All India Council for Technical Education (Grant of Approval for starting new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994 (hereinafter called, 'the Regulations') as amended from time to time, an educational agency has to furnish Fixed Deposit Receipt (FDR) in a sum of Rs.50,00,000/- (Rupees fifty lakhs only) in the joint account of the Regional Office and the concerned educational institution. The petitioner, it is not denied, submitted such F.D.R at the time of granting of approval.

Some time in 2003-04, AICTE came to know that some of the approved Technical Institutions committed certain irregularities insofar as complying with the condition of furnishing F.D.R for an amount of Rs.50,00,000/- (Rupees fifty lakhs only). In the case of the petitioner, the General Manager of Nagarjuna Grameena Bank, Khammam, sent a communication dated 9-12-2003 to the Adviser (Administration) of the AICTE informing that on inspection of xerox copies of F.D.Rs and cash vouchers received at the bank, it was revealed that the F.D.Rs have been issued for fictitious amounts by inflating the amounts several times and that the F.D.R has been issued to the petitioner for an amount of Rs.50,00,000/- (Rupees fifty lakhs only) by inflating the actual amount of Rs.50,000/- (Rupees fifty thousand only). Indeed, as per the annexures to the said letter in respect of other two Institutions run by the Society, namely, St.Joseph College, Pochampalli, offering M.C.A. Course and St.Xavier College, Hyderabad, also offering M.C.A. Course, produced F.D.Rs which were issued for fictitious amounts by those colleges by inflating the actual amount of Rs.20,000/-.

The AICTE initiated enquiry and appointed a High Power Committee to enquire into malpractices in submission of F.D.Rs. The Committee appears to have gathered necessary information from various banks, from where F.D.Rs were obtained and recommended a course of action. In the meanwhile, it appears, the petitioner having come to know that a Police complaint has been lodged by Nagarjuna Grameena Bank at Pochampalli Police Station against the Accountant of the bank and another person, gave a Police complaint against one T.Satyanarayana, who was once upon a time the Director of the Society at Alwal P.S. (Halia) in Nalgonda District, alleging that the Society handed over an amount of Rs.50,00,000/- (Rupees fifty lakhs only) and such amount was paid to the bank, and that said Satyanarayana colluded with Accountant of Bank. Be that as it is, the petitioner probably to mitigate the situation, sent F.D.R issued by the Central Bank of India, Hyderabad, in the name of the Regional Office and the petitioner-Society on 4-2-2004. These facts are not denied before this Court.

As noticed supra, the High Power Committee recommended action against all the

erring Technical Institutions. Insofar as the petitioner-Institution is concerned, the High Power Committee recommended that the petitioner-Institute may modify the F.D.R as per the requirement within four weeks and the petitioner be restrained from making admission for one year i.e. 2004-05 for violating the AICTE norms. The matter was placed before appropriate authority and it was directed to serve a show-cause notice on the petitioner. Accordingly, the Adviser to the AICTE, by communication dated 28-7-2004, issued a show-cause notice, calling upon the petitioner, to show cause as to why action should not be taken as recommended by the High Power Committee. This communication is assailed in the writ petition.

In the writ petition, *mala fide* action is attributed to the Chairman of the AICTE, second respondent herein. This Court, however, while ordering 'Rule Nisi', refused to issue any notice to the second respondent observing that the question of issuing notice to the second respondent would be considered after the replies are received by the Court. Therefore, at this stage, this Court was not inclined *prima facie* to come to the conclusion that the allegations are *mala fide* made against the second respondent were true.

In the reply affidavit filed by the Correspondent of the petitioner-College, a new allegation is made that though the petitioner has submitted explanation on 07-08-2004, the AICTE approved the minutes on 30-08-2004 accepting the recommendations of the High Power Committee. A counter-affidavit is filed denying the allegation of malice and further contending that at this stage, the writ petition is premature. The allegation that the issue was predetermined by the AICTE has been denied by the learned Counsel for the AICTE by producing necessary material before this Court.

The learned Counsel for the petitioner, Sri Ramesh Ranganathan, raised two contentions. First, he would urge that factually and actually the petitioner or its parent Society are not responsible for the situation, which resulted in issue of F.D.Rs for fictitious amounts, that the petitioner sent fresh F.D.Rs for more than Rs.50 lakhs and that the show-cause notice suffers from non-application of mind. Secondly, he would urge that the impugned show-cause notice is vitiated by malice on the part of the second respondent. In support of the same, it is contended that the second respondent has initiated action as the petitioner approached this Court by filing writ petitions in 2002-03 and that when the petitioner approached the second respondent seeking parity of treatment, the second respondent informed the petitioner that the petitioner-Institution would be taught a lesson.

Opposing the writ petition, the learned Senior Standing Counsel for the AICTE, Sri Satyanarayana Prasad, submits that writ petition against a show-cause notice is not maintainable, that the allegations of malice are vague or do not warrant any further enquiry and that after the High Power Committee made recommendations, before the matter is placed before the Executive Council of competent authority for a decision under Section 10 of the Act and Regulation 12 of the Regulations, a show-cause notice was issued against which the writ petition would not be maintainable.

It is axiomatic that ordinarily the writ petition against show- cause notice would not

lie for two reasons. First, at the stage of show- cause notice, there is no decision, which requires judicial review on any of the settled principles of administrative law. Secondly, if the Court of judicial review at the stage of show-cause notice traverses the allegations and counter allegations and records, finding on questions of fact and law in coming to the conclusion whether or not a show-cause notice is validly issued, the same would cause prejudice to either of the parties. Even where the jurisdiction of issuing authority is impeached, ordinarily this Court cannot go into these questions as the matters can wait of final decision by the competent authority. This is more telling when the fact finding authority is different from that of the decision making authority as in this case, where admittedly it is only the Executive Council constituted under Section 3 of the Act, which is competent to take a decision in the matter as per Section 10 of the Act read with Regulation 12 of the Regulations.

Even where a person alleges inherent lack of jurisdiction of the authority issuing a show-cause notice, still as held by the Supreme Court in ***Special Director and another versus Mohd. Ghulam Ghouse and another***, this Court cannot entertain a petition for judicial review, for the jurisdictional issue can as well be raised before the show-cause notice issuing authority. Paragraph 5 of the judgment is relevant and it is apt to extract hereunder:

This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitioner questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally *non est* in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. **Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court……**

(emphasis supplied)

Considerable time has been spent by the learned Counsel for the petitioner to challenge the order on the ground of malice. According to the Counsel, any action vitiated by malice amounts to acting contrary to law and such action being *ultra vires* must be held without jurisdiction. I am afraid; the statement is too broad based and cannot be accepted in the facts and circumstances of this case. It is now well settled that the factum of bias, and likelihood of bias would vitiate administrative decision of authority, but when there is apprehension of likelihood of bias, the Court would be slow in invalidating the decision on the ground of malice, for every apprehension of likelihood of bias can not be well founded. Further, to my mind, when the decision is manifestation of collectivity of opinion taken by Organisation or body consisting a large number of people, it would be very difficult to attribute malice to such body (See, the decision of the Supreme Court in ***Tata Cellular v. Union of India***). Therefore, it would not be proper for this Court to record any definite finding on this

having regard to the allegation made in para 9 of the affidavit accompanying the writ petition. These matters would have to be gone into when final decision is taken after considering the explanation submitted by the petitioner in accordance with Regulation 12 of the Regulations.

The recommendation made by the High Power Committee *inter alia* is to restrain the petitioner-College from making admissions for 2004-05. As on the issue of show-cause notice dated 28-7-2004, the admissions in Andhra Pradesh for Engineering Colleges were almost completed and at that stage, as rightly submitted by the learned Senior Standing Counsel for the AICTE, there was no decision restraining the petitioner as such. Therefore, the petitioner cannot be said to have any redressable grievance at that stage. The writ petition, it must be held - to have been filed in great haste without waiting for any decision of the AICTE. It shall now be open to the Executive Council for the AICTE to consider representation/s of the petitioner and all events subsequent to the constitution of the High Power Committee and take appropriate decision in the matter.

The writ petition, with the above observations, is dismissed.
No order as to costs.

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V.V.S. RAO, J

November 08, 2004.

Note:-

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B/o.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

One fair copy to the Hon'ble Sri Justice V.V.S.Rao

(for His Lordship's kind perusal).

To

1. The Member Secretary, All India Council for Technical Education,

Indira Gandhi Sports Complex, I.P. Estate, New Delhi.

2. Prof. R.Natarajan, Chairman, All India Council for Technical

Education, Indira Gandhi Sports Complex, I.P. Estate, New Delhi.

3. The Station House Officer, Police Station Alwal, (Halia), Nalgonda.

4. The Station House Officer, Boodhan Pochampally Police Station,

Nalgonda District.

5. Two CCs to the Government Pleader for Home, High Court

Buildings, Hyderabad (O.U.T).

6. 8 (eight) L.R. copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates' Association Library,

High Court Buildings, Hyderabad.

9. Two CD copies.